BRUNEI REPORTS

Public Prosecutor v Metassan

COURT OF APPEAL (BRUNEI) — CRIMINAL APPEAL NO 4 OF 1992
TL YANG LP, NAZARETH AND MCMULLIN COMMISSIONERS
3 DECEMBER 1992

Criminal Procedure *— Confession — Admission of confession statement — Whether there was oppression*

Criminal Procedure *— Judge — Self-disqualification — Judge made adverse finding against appellant in earlier case — Whether there was a failure of justice to render decision unsafe and unsatisfactory*

The appellant was charged under s 28 of the Public Order Act (Cap 148) for carrying a firearm without lawful authority and in a special area without lawful authority. The most important evidence for the prosecution consisted of admissions said to have been made by the appellant. These statements were challenged by the appellant on the ground that they were the fruit of oppressive behaviour on the part of the police officers. Counsel for the appellant had also objected to the composition of the court as it would be difficult for the presiding judge to maintain an open mind, since he had already ruled, in another trial, that statements given by the appellant were voluntary and there was no oppression. Counsel asked that the court should disqualify itself. This application was rejected and the trial proceeded. The appellant was found guilty as charged and the mandatory sentence was passed. The appellant appealed to the Court of Appeal.

Held, allowing the appeal:

(1) It would be difficult to regard the prolonged and unlawful detention of the appellant coupled with the rigours of the 'special procedure' and his isolation for many weeks from family or other friendly contacts as anything other than oppressive. It was merely because the appellant had not positively identified the general oppressiveness of his situation as a contributory factor in his consenting to make a statement, that the court, rejecting his contention that it was largely concocted and untrue, did not sufficiently attend to the gravity of the oppressive elements and the possibility that by them alone his will might have been overcome. However, bearing in mind the trial court's advantage in seeing and hearing the witnesses, it is difficult, at this point, to say that there had been a failure of justice such as would oblige the court to interfere.

(2) Here, the appellant faced a tribunal in which the presiding judge who had delivered the rulings and the judgment in the previous

case was once again to be the arbiter of his truthfulness in relation to the self-same material. The appellant and his advisors might well have confronted a differently constituted court without any apprehension that the appellant's cause might be heavily overshadowed by what had transpired in the previous case. In this regard, the court did not think that the fact that in the earlier case, the presiding judge sat with a different commissioner would have relieved any such apprehension. Therefore, there was a failure of justice sufficient to render the decision unsafe and unsatisfactory.

Notes

For cases on the admissibility of confession statements, see 5 *Mallal's Digest* (4th Ed) paras 2529–2532.

Cases referred to

1 *Muthusamy v Ang Nam Cheow* [1979] 2 MLJ 271 (refd)
2 *R v Fulling* [1987] QB 426 (refd)
3 *R v Watson* (1980) 70 Cr App R 273; [1980] 2 All ER 293 (refd)
4 *R v Bogle* [1974] Crim LR 424 (refd)
5 *R v Quinn and Bloom* (1961) 45 Cr App R 279; [1961] 3 All ER 88 (distd)
6 *PP v Tiew Peng Lam* [1991] 2 CLJ 1197 (distd)
7 *PP v Lau Tuck Weng & Anor* [1988] 3 MLJ 217 (folld)

Legislation referred to

Public Order Act (Cap 148) s 28

James Chiew (*Abrahams Davidson & Co*) for the appellant.
Ahmad Busani (Deputy Public Prosecutor) for the respondent.

Cur Adv Vult

McMullin Commissioner (delivering the judgment of the court): The appellant is a young man of some 29 years of age who at the time of the events with which we are concerned, was a serving Corporal in the Royal Brunei Armed Forces. He had been a soldier for about nine years and was then employed as an armourer at the Penanjong Military Camp. He came before the court on a single charge taken under s 28 of the Public Order Act (Cap 148) framed as follows:

> Section 28 Public Order Act (Cap 148) — Carrying of a firearm without lawful authority therefor and in a special area without lawful excuse.
>
> That you, between the month of May 1990 and 12 December 1990, along Kampong Lumapas, Limau Manis, Brunei Darussalam, in a special area without lawful excuse did carry a firearm without lawful authority therefor, to wit — one Browning pistol

On 9 June, the court (Sir Denys Roberts CJ and Mr Commissioner Downey) found him guilty as charged and passed the mandatory sentence.

The case for the prosecution was that the appellant had been seen on one occasion in possession of a Browning pistol, the component parts of which were later recovered by police officers from the armoury at Bolkiah Military Camp.

There was uncontested evidence that on one occasion in the year 1990, the appellant had gone with three of his fellow soldiers in a car driven by one of them on a trip to an area known as Pandam across the Brunei-Sarawak border. It appears to have been in the nature of a joy-ride for the purpose of indulging in some alcohol and gambling.

The car was driven by L/Cpl Julaiha who told the court that while they were there, the appellant went to see somebody whom the witness referred to as Tamit and that he saw the appellant meet a man whom he assumed to be either Tamit or a friend of Tamit. It looked to him as if there might be some trouble between them but in the event nothing happened and the appellant returned to the car. At the commencement of the return journey to Penanjong, the witness saw the appellant take something that looked like a pistol from his waistband and put it in a bag which he was carrying. Julaiha saw only the pistol's grip and could not be sure whether it was a toy or a real gun. The witness went on to say that the appellant told him that he had been cheated and also asked them to keep quiet about this. He told the appellant that if that was army property, he should return it. They returned to Penanjong and some three days later the appellant told him: 'it's already in'.

One of the other passengers in the car, L/Cpl Zainuddin, testified to having heard the appellant on this journey say that he had threatened someone with a pistol. This witness confessed to having been in a sleepy condition as a result of having taken alcohol and some form of drug at the time. L/Cpl Julaiha could not remember the exact date of this adventure but he thought it had taken place in May 1990 after Hari Raya.

It is clear that upon that evidence alone, it is very unlikely that the appellant could have been charged with any offence, let alone convicted after trial. The most important evidence in the case, however, consisted of admissions said to have been made by the appellant in a statement recorded by ASP Azahari on 18 December, six days after his arrest on 12 December and his detention at Berakas Police Station. A further statement was recorded from him by Insp Suhaini at the same place on 26 December. These statements were challenged by the appellant on the grounds that they were the fruit of oppressive behaviour on the part of the police officers, but both the statements were admitted in evidence, after the usual enquiry, in the course of which the appellant gave evidence and called his sister and brother-in-law as witnesses on his behalf. The court found the statements to have been voluntary and they were admitted in evidence. The appellant then gave evidence on the general issue in the course of which he admitted the trip to Pandam which he said had taken place some time in August of 1990 but denied any dealings with any person called Tamit and further denied that he had ever been in possession of any pistol on that occasion.

Of the two statements admitted in evidence, only the first of them, that taken by ASP Azahari on 18 December, can be said to have any bearing on

A the incident described in the charge. Indeed, in finding the charge against the appellant proved, the court of trial in effect disregarded the second of those statements and relied wholly upon the single passage from the earlier statement which is to the following effect:

> In August I did ever go to Pandam together with L/Cpl Madtassan. I once
B pointed this second pistol at a man named Tamit who supplied cough mixture, because I suspected that he wanted to trap me. At that time the pistol didn't have any bullet. (Signed.)
>
> After that I kept the pistol took to the bachelors' barracks and buried in a safe place and the next day I gave the pistol to Duraman for him to keep. (Signed.)
>
> After that I handed over to Madtassan and asked to keep in a safe place.
C (Signed.)

Immediately prior to that passage, the accused in the same statement had described how he had gone to the Bolkiah workshop and how he, together with L/Cpl Madtassan, had assembled a pistol from various component parts which he described as being 'for my personal use'. The component
D parts of a Brownig pistol were later recovered by ASP Azahari from the Bolkiah workshop. It had clearly been the intention of the prosecution to demonstrate that these were the same components which had gone into the making of the pistol that had been so briefly glimpsed by L/Cpl Julaiha on the return trip from Pandam many months previously. The court, however, found that the evidence did not take the prosecution so far. The learned
E Chief Justice said (at p 20): 'There was no link between the pistol in the possession of the defendant and that later shown by L/Cpl Madtassan to the police party which went to Bolkiah Camp workshop on the 17 December.'

He found, however, that that part of the appellant's statement which has been set out above provided the essential link between the pistol seen by the
F eye-witness and the pistol described in the charge. If that statement had been excluded from the evidence, nothing contained in the second statement, taken on 26 December, could have repaired the damage to the prosecution case, as the court of trial readily recognized. It is not surprising, therefore, that the major challenge to the conviction both at the court of trial and upon this appeal has consisted of an endeavour to demonstrate
G that the judges in the court below were wrong to admit the statement and the major part of the grounds of appeal are directed to this issue: viz, grounds 1–3 and 5–16.

It is common ground that no actual violence was ever perpetrated upon, or even offered to the appellant. In summary, the following are the circum-
H stances of which he complains and which it is said induced him to break silence:

(1) He was held in detention in Berakas Police Station from the time of his arrest on 12 December for three days during which he was not charged with any offence nor, it appears, interviewed. He was throughout this
I period denied contact with any member of his family.
(2) On 15 December he was taken, hooded and handcuffed behind his back, to Police Headquarters Gadong where he was interviewed by ASP Azahari and S/M Bagol, for nearly two hours. They told him that

he would be held like a political prisoner, kept in a dark room and never brought to trial. He was not then charged with any offence, but was taken back to Berakas still hooded and handcuffed.

(3) On 16 December he was served with a detention order under the Public Order Act (Cap 148). It is not disputed that this arrest and the subsequent detention, which persisted for over a year until he was eventually brought before a magistrate in 1991, was not justified under that Act.

(4) On 17 December he was interrogated twice by Insp Md Don, a special branch officer. He made no complaint about his treatment on this occasion. This officer was unable to give an account of what transpired since he either made no notes of the proceedings, or else destroyed his note — it is not clear which. It was his duty to keep such a note under the provisions of s 116(1) of the Criminal Procedure Code ('the CPC').

(5) On 18 December at Berakas Police Station, ASP Wahab took from him the statement on which the present case now principally rests. He was not told he could remain silent and he was threatened by Wahab who said: 'It is better for you not to be tried.' He was then labouring under fear from the cumulative affect of his detention and the various threats which had been made.

(6) On 26 December he was further interviewed, this time by the officer in charge of Berakas Police Station, ASP Suhaini, who charged him with three offences, one under the Penal Code and two under that Code together with the Arms and Explosives Act (Cap 58). He was duly warned in accordance with the provision of s 117(3) of the CPC and a lengthy statement was recorded by way of question and answer. None of these charges, and none of the confessional matter contained in that statement allegedly in answer to them has any bearing on the charge we are considering. No objection seems to have been made to the introduction of this evidence at the trial, either on the ground of their irrelevance or of their prejudicial character, and this statement, like the earlier one, was challenged solely on the ground that it had been obtained by oppression and was inadmissible.

(7) He continued to be held in detention at Berakas until some time in January 1991.

(8) During the first three days of his detention, the appellant was never taken before a court as should have been done in accordance with s 33 of the CPC.

Such, in summary, are his complaints.

At the trial, the appellant gave evidence during the voire dire concerning the admissibility of these statements, and he told the court that throughout this period, he had received no visits from his family, permission having been refused. He called his sister Saleha who said that she had many times telephoned Berakas Police Station to seek permission to see her brother and had likewise always been refused.

These various episodes of questioning, including the hooding and handcuffing and the continued detention of the appellant, were never denied by the prosecution witnesses. The police evidence as to family visits was distinctly confused but it was common ground that no such visits ever took

A place. All suggestion of threats, inducements, promises or oppressive behaviour was, however, denied.

There was thus, even upon the prosecution case, substantial material to found the challenge to the admissibility of the statements. The learned Chief Justice expressly rejected the story of inducement, threat, etc. He said (at p 12):

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> It is important to note that the defendant did not allege that, when three days later he gave his statement to ASP Wahab on 18 December, he was worried that he would again be hooded and handcuffed and taken to police headquarters. He asserted only that he was still affected by the threats made against him by ASP Azahari and S/M Bagol and other police officers, though he did not identify the latter.

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In the later trial of Madtassan bin Lamat (CT 9 of 1990), the appeal in which is also before us in the present session, the trial court, identically constituted, had formed the opinion that this 'special procedure' exercised upon the defendant in that case only one day before he made certain admissions of great importance to the prosecution case, was sufficient to render the statement suspect. The Chief Justice said:

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> It is not necessary for us to decide that he was in fact so affected if we consider that 'there is a reasonable possibility' that he was, since the burden lies on the prosecution to establish that the statement of defendant was a voluntary one.

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That statement was accordingly excluded. In that case, Mr Chiew, counsel for the appellant, says, the court applied the proper test, and he would ask us to say that in the passage quoted above from the judgment in the present case the judges, confronted with precisely the same procedure and a gap of three days instead of only one day between the use of that procedure and the making of the statement, have too readily concluded that a mere failure by the appellant to refer specifically to the hooding, etc. as contributing to the condition of fear and confusion of which he complained, must mean that that aspect of his detention could therefore be safely disregarded.

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Counsel points out that in Madtassan's case the court observed that it would be a man of 'unusual fortitude' who could withstand the pressures of the 'special procedure', while here they were considering the effect of that procedure on a man whom they were prepared to regard merely as 'moderately tough'.

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Although it is true that the appellant did expressly refer only to threats and inducement, which the court had found not proved, yet on their own estimate of him it would seem questionable to conclude that, by the proper test proposed by them in the later case, the respite of an additional two days free from the exceptional treatment must have been sufficient to purge the situation of its menace. This, counsel said, did not entitle them to conclude that, in the context of the evidence which they had accepted, including the unlawful detention, and the absence of family contact, it was not even a reasonable possibility that the appellant was telling the truth when he said: 'I was in a state of fear. Whatever the police told me to do, I would do, because I was in police custody and they could do what they wanted.' (p 24 of the record of evidence).

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Mr Chiew who in his helpful argument pointed to a number of questionable features in the police evidence on the voire dire, asks us to say that there was, on the face of that evidence itself, good reason to conclude that the police were not telling the truth on the matter of threats, inducement, etc. As to this, we are mindful of the many authorities, of which a valuable example is the Privy Council decision in *Muthusamy v Ang Nam Cheow*,[1] on which Mr Leong for the prosecution relies, which circumscribe the power of an appellate tribunal to trespass on the domain of the trial court and to substitute its own opinion in matters of fact for that of the hearing and seeing judge.

Whether this statement was voluntary or involuntary is a question of fact. But this rests upon the credibility of those who spoke for it and against it. In many cases, it will be the impression of the trial judge that is the only permissible source for decision. But an appellate court may feel obliged to disagree with an assessment which appears to it to proceed upon a doubtful or fallacious assumption. Thus, in the present case, the evidence of Saleha, the appellant's sister, was disregarded as support for the appellant's contention that he was never allowed to see his family up to the time when he was taken to hospital for surgical treatment in January 1991. The court (at p 14 of the judgment) refers to her evidence that she had tried about five times to arrange a visit and had been refused each time. This evidence is not positively rejected but it is discounted on the basis that no member of the family ever went to pursue the matter at the police station in person. How useful that would have proved may be gauged by the fact that on ASP Wahab's own showing an order emanating from his superior ASP Yahya, restricting all visits for either 24 or 48 hours — it is not clear which — was imposed by him on 12 December and had not been rescinded by 28 December. The court observed that it was not clear whether the restraint was ever lifted.

This refusal of family visits was clearly an important component of the 'special procedure'. But this is dealt with by the court in isolation, where it is said (at p 14 of the judgment):

> We cannot accept that, even if he was refused family visits this must have so affected him that he was influenced thereby to make statements that he did not wish to make. He did not suggest this himself.

But the appellant did complain of being refused these visits and it was for the court, taking that circumstance with the rest of what it found to have been proved, to consider whether on this evidence as a whole, there was a reasonable possibility that it might have overborne his will and caused him to speak when he would have wished to remain silent.

We do not think it necessary to pursue the many points made by Mr Chiew in his endeavour to show that the police witnesses were untrustworthy. He concedes that most of these points were canvassed by him at the trial and it would be impossible to say that the trial judges simply took no account of them at all. But it must be noted that the credibility of ASP Wahab was called in question by the court itself which could not accept his denial of having elicited the statement, at least in part, by a process of

A questions and answers. In contrast, the truth of the appellant's contention that he was put in fear by being told that he was to be treated like a political prisoner and held indefinitely without trial is given some colour by the fact that he was held incommunicado certainly up to his visit to the hospital in January, although there is no evidence to show what the situation was in the subsequent year while he was still detained. It appears that he was only
B taken before a magistrate some 16 months after his original arrest.

In *R v Fulling*,[2] Lord Lane LCJ considered a number of earlier decisions and settled upon the definition given in the *Oxford English Dictionary* to the term 'oppression'. In part this reads: 'exercise of authority of power in a burdensome harsh or wrongful manner'.

C It would be difficult to regard the prolonged and unlawful detention of the appellant in the present case, coupled with the rigours of the 'special procedure' and his isolation for many weeks from family or other friendly contact, as anything other than oppressive, apart from any impropriety of the nature of threat, inducement, etc. We are left, therefore, with the impression that it was merely because the appellant had not positively
D identified the general oppressiveness of his situation as a contributory factor in his consenting to make a statement, that the court, rejecting his contention that it was largely concocted and untrue, did not sufficiently attend to the gravity of the oppressive elements and the possibility that by them alone his will might have been overcome.

E On its own, and bearing in mind the trial court's advantage in seeing and hearing the witnesses on the issue, it might yet be difficult for us to say that there had been a failure of justice such as would oblige us to interfere. There is however a further factor of very considerable importance to which we must turn.

F *Composition of the court — defence objection (ground 4)*

In Criminal Trial 7 of 1991 (the first appeal heard in the present session and the first of these related cases to be tried) the present appellant was tried with two other men on charges under the Public Order Act (Cap 148).
G He faced two charges in connection with his alleged possession of a Browning pistol. The trial commenced on 10 February 1991 and on 20 April the court gave judgment. He was convicted upon both charges. In the course of the trial, two confessional statements said to have been made by him to the police were admitted in evidence after objection by the defence and the trial of the issue of their admissibility. He did not give evidence during this voire
H dire but the police witnesses were challenged in cross-examination on the ground that the statements had been the result of threats, inducement, promises and oppression. The appellant gave evidence on the general issue and supported these suggestions. Counsel for the appellant addressed the court on these particular objections and also on the general question of
I oppression.

The trial in the present case began on 28 May 1991 and the same statements were tendered and were once more objected to upon the same grounds. On this occasion, the appellant gave evidence on the voire dire

which was to all intents the same as he had previously given some two months earlier in the first trial. The same objections were raised in cross-examination of the same witnesses. The present case was tried by the learned Chief Justice and a different Commissioner.

At the commencement of the trial in the present case, counsel for the appellant objected to the composition of the court on the ground of possible bias on the part of the presiding judge and asked that the court should disqualify itself. This application was rejected and the trial proceeded. In giving judgment, the learned Chief Justice dealt with this objection in the following way (at p 5 of the judgment):

> Before the first witness was called, counsel for the defendant suggested that it was undesirable for the court to be constituted as it was.
>
> This was on the basis that it would be difficult for the presiding judge to maintain an open mind, since he had already ruled, in another trial, that statements given by the defendant to the police were voluntary and that the defendant had been disbelieved, when he testified that his statements were the result of threats and oppression and were signed by him because he was frightened and that they did not represent what he said.
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> We did not then know what evidence was to be put forward by the defendant. It might have been the same as was given in CT 7/91, or it might have been different. The defendant gave no evidence on the voire dire in the earlier trial.
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> We do not, however, accept the argument that, because the presiding judge arrived at the conclusion, in another trial, that the defendant was not then telling the truth, he must necessarily reach the same conclusion in another trial or that he is likely to prejudge the matter, because of his earlier experience. We have no reason to suppose that he will not retain an open mind in his approach to the guilt or innocence of the defendant in this trial. In small jurisdictions, judges and magistrates often have to try persons about whom they have knowledge from previous trials. This alone is not considered to be a sufficient reason for removing them from the later trial or for assuming that this knowledge will mean that they are not able to approach it with an open and unbiased mind. Nor is there any rule of law that a retrial, where the judge must necessarily know the majority of the facts, should take place before a different judge. This is a matter for the court's discretion — see *R v Bogle* [1974] Crim LR 424 and *PP v Tiew Peng Lam* [1991] 2 CLJ 1197.

It was made clear by Mr Chiew that he did not question the integrity of the members of the court or the capacity of the presiding judge to approach the case with a mind alert to the danger of prejudging the issue which was the only truly vital in the case. But counsel stressed the difficulty thus imposed upon the tribunal as a factor in itself undesirable. His main objection, however, was based on the general principle that justice must not only be done but must manifestly be seen to be done. In the circumstances of this trial, counsel maintained that such could never have been the case in the eyes of the defendant or of all who might be concerned about the trial. He stressed the fact that the charge is a capital charge, against which the, expense and inconvenience of organizing a differently constituted court should weigh light in the scales of justice.

This matter has given us much concern. Although the appellant did not give evidence on the special issue at the former trial, the court, of necessity,

had to attend to the evidence which he did give on the matter ultimately in that case. If at that stage the court had felt any misgiving about its previous ruling because of anything the defendant then said, it would have been open to it to reconsider the matter and to discount the statement altogether on the basis that it had been inadmissible against the defendant from the outset: See *R v Watson*.[3] An acquittal would then necessarily have followed since the evidence of the witnesses Julaiha and Zainuddin was quite insufficient to establish the particulars of the charge. Nothing of the kind occurred at the first trial. However, at the commencement of the second trial when this objection was taken, the court was aware that the same statements, and almost certainly the same witnesses, would come under scrutiny afresh. As the Chief Justice said, the evidence of the appellant might be the same or it might be different at the second trial. It it proved to be substantially the same and if the prosecution witnesses did not differ materially from what they had previously said, the statements must once again be admitted. If, however, those witnesses were less impressive the second time around and if the appellant, by contrast, proved more convincing, the court might then feel obliged to reject the prosecution evidence as untrustworthy and to exclude the statement. This would inevitably embarrass the previous finding and possibly impose the necessity to see that justice was done by whatever other means were available, whether within the law or by way of administrative or other action. But the real point here is that the appellant faced a tribunal in which the presiding judge who had delivered the rulings and the judgment in the previous case was once again to be the arbiter of his truthfulness in relation to the self-same material.

The Chief Justice cited *R v Bogle*[4] which does indeed refer to the principle that the matter is one for the discretion of the judge. The very brief note does not reveal the facts of that case and the commentator, for what it is worth, points out that in *R v Quinn and Bloom*[5] — referred to in *Bogle*[4] — where the question was whether a judge having discharged the jury in a trial involving a charge of keeping a disorderly house should have ordered the re-trial to take place before another judge. Ashworth J, without referring to the principle, thought it would have been desirable and the commentator adds '... it seems to be the general practice that this should be so although it may not be mandatory'.

The other case referred to by the Chief Justice, *PP v Tiew Peng Lam*,[6] also concerned a jury trial. Mahadev Shankar J, in refusing the application, said that in the absence of good reasons re-trial in Malaysia would always be held before the same judge.

A re-trial before a jury is in a very different position from a case where the judge is both judge and jury and the matter in issue is a vital piece of evidence which he has already excluded in the previous case in finding the defendant untruthful. This is the very point made by KC Vohrah J in *Lau Tuck Weng & Anor*[7] to which Mr Chiew referred us.

In that case, the principle we are now considering was thought by the judge to be of such importance that he disqualified himself from hearing a charge under the Dangerous Drug Act 1952 because of the likelihood that in the case then before him a witness would be called for the defendants

upon whose evidence as a witness in a previous case he had adversely commented. In that case, as in the present case, the charge related to a capital offence.

Conclusion

This was a case which rested substantially upon one brief confessional statement which was retracted. It was admitted together with a number of confessions and admission relating to other occasions not connected with the charge; and further prejudicial matter, equally unconnected with the charge, was admitted in the form of the second statement. Although no objection was taken to this either at the trial or upon the hearing of the appeal, we do not think it can be overlooked in relation to this ground of appeal. The court assumed a considerable burden in dealing with this one charge encumbered by the recollection of a large weight of evidence, already accepted, which stood against this appellant in the earlier case. This necessarily obliged a steady and vigilant shutting out from consideration of everything that was not relevant to the proof of the charge. We make no question of the ability of the court to do so. What concerns us here is how the matter must have appeared to the appellant, to counsel and to all who were in any way concerned with the fairness of the trial.

Stripped down to the bare ten lines which constituted the only relevant admission, together with the dubious and fragmentary testimony of the two prosecution witnesses, the appellant and his advisors might well have confronted a differently constituted court without any apprehension, however unjustified, that the appellant's cause might be heavily overshadowed by what had transpired in the previous case. In this regard, we do not think that the fact that in the earlier case, the presiding judge sat with a different commissioner would, of itself, have relieved any such apprehension. We are satisfied that there was here a failure of justice sufficient to render the decision unsafe and unsatisfactory.

The appeal against conviction is accordingly allowed. The conviction is quashed and sentence set aside.

Appeal allowed.

Reported by Jeanne Tan